

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2006-000369

06/10/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

QUESTAR SOUTHERN TRAILS PIPELINE  
COMPANY

PAUL J MOONEY

v.

ARIZONA STATE DEPARTMENT OF  
REVENUE, et al.

SCOT G TEASDALE

**UNDER ADVISEMENT RULING**

(Defendant's Motion For Summary Judgment and Plaintiff's Alternative Motion To Amend)

The issue here is whether the amendment to A.R.S. § 42-11001(6) limiting valuation to no more than market value applies to Plaintiff's assessment for tax year 2007, in which Plaintiff alleges that obsolescence has resulted in a diminution of market value below the value obtained through use of the statutory formula, A.R.S. § 42-14204. This issue was raised in earlier litigation that reached the Court of Appeals. The Court of Appeals, in that ruling, held that the amendment was not retroactive to tax years already final at the time of its enactment. *Arizona Dept. of Revenue v. Questar Southern Trails Pipeline Co.*, 215 Ariz. 577, 581 ¶ 21 (App. 2007). The 2007 case raises certain issues that were not dealt with by the Court of Appeals, specifically whether the statute must be or should be applied to tax assessments not yet final at the time of its enactment.

The Court of Appeals' holding interpreted the statute: its lack of retroactivity applies to Questar's valuation for those two years. Its interpretation of the governing statute is controlling. The Department argues the manner by which that valuation is obtained has been conclusively resolved by the Court of Appeals. The 2006 amendment to A.R.S. § 42-11001(6) governs the pipeline valuation statute, A.R.S. § 42-14204, to the extent that the method specified by the latter might result in a valuation exceeding the market value of the property. The Court of Appeals

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rejected Plaintiff's appeal to subsection (6) because of its lack of retroactivity, observing in a footnote that there might have remained an issue of whether market value had been adequately proved at trial. *Id.* at ¶ 20-21 and n.5. It did not indicate that the entire retroactivity question, along with the evidentiary issue, was moot because subsection (6) does not apply at all where another statute controls valuation. Moreover, the limiting language can logically apply only where a statutory method is prescribed. Subsection (6) reads in relevant part, "'Full cash value' for property tax purposes means the value determined as prescribed by statute. If no statutory method is prescribed, full cash value is synonymous with market value.... Full cash value shall not be greater than market value regardless of the method prescribed to determine value for property tax purposes." Where full cash value is synonymous with market value, it is necessarily equal to, not greater than, market value. The limitation therefore can apply only when the valuation is not definitionally equivalent to market value, that is, where the statute requires a valuation method other than determination of market value.

The key question thus becomes whether subsection (6) applies, if the Court may so express it, semi-retroactively: after the valuation has been performed but before the appeal deadline. The distinction between substantive and procedural law helps resolve the issue in this case. The focus of both valuation statutes is the determination of the property valuation, not the ultimate collection of the tax. A.R.S. § 42-14204(A) begins, "The valuation of pipeline property that is subject to valuation for tax purposes shall be *determined* in the manner prescribed by this section," and as quoted above, A.R.S. § 42-11001(6) reads, "'Full cash value' for property tax purposes means the value *determined* as prescribed by statute.... Full cash value shall not be greater than market value regardless of the method prescribed to *determine* value for property tax purposes" (emphasis added). Valuation is substantive, defining the entitlement of the taxing authorities to a certain amount from the taxpayer. See *Waddell v. 38<sup>th</sup> Street Partnership*, 173 Ariz. 137, 141 (Tax 1992) ("whatever property rights as may exist in a means of measuring a tax belong exclusively to the legislature"). Once that entitlement is fixed, collection of the tax is procedural: it pertains to the manner in which the right to the tax revenue and the right of the taxpayer to challenge the levy are realized. In short, a statutory change to the method of valuing property is substantive, presumptively not retroactive unless it contains a specific statement of retroactive intent. *Aranda v. Industrial Comm. of Arizona*, 198 Ariz. 467, 470 ¶ 12 (2000). The legislature did include such language, for instance, in the statute underlying *Waddell*, *supra* at 139 ("Both Senate Bill 1370 and House Bill 2222 specifically legislated that the amendments to A.R.S. § 42-162 be retroactive to the 1986 tax year"). It did not do so here.

The early cases cited by Plaintiff, *Territory v. Perrin*, 9 Ariz. 316 (1905), *Trigg v. City of Yuma*, 59 Ariz. 480 (1942), and with some immaterial distinction *Hallas v. Evans*, 69 Ariz. 14 (1949), are distinguishable in that they turn on the status of the owner at the time the tax is due (which determines the ability of the authorities to collect it), not the valuation of the property to determine the tax which the owner, unless exempt, must eventually pay. It is not suggested that

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Plaintiff is exempt from payment of tax, or that there has been any transfer to a tax-exempt entity.

Therefore, IT IS ORDERED:

1. Granting Arizona State Department of Revenue's Motion For Summary Judgment.
2. Granting Plaintiff's Alternative Motion To Amend.